Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Request of the District of Columbia for Waiver of the Commission's Rules to Enable Prompt and Efficient Deployment of a Public Safety Interoperable Broadband Network in the 700 MHz Band	)	WT Docket No. 06-150
	)	
	)	PS Docket No. 06-229
	)	

To: The Public Safety and Homeland Security Bureau

REQUEST FOR WAIVER

I. SUMMARY AND INTRODUCTION

The District of Columbia ("District") hereby requests that the Bureau waive Commission rules to help enable the completion and operation of the nation's first and only public safety broadband network in the 700 MHz band. As the District has expressed in prior filings with the Commission, the current regulatory structure poses a substantial obstacle to the business case for further investment in the network; indeed, such investment has stalled, leaving the network incomplete and unsustainable.

Specifically, the District requests that the Bureau waive Commission rules to provide the District a "sublicense" that would provide all the authority of a full license except that the District would have to meet requirements to ensure interoperability with other public safety broadband networks in the 700 MHz spectrum, including any national network under the auspices of the Public Safety Broadband Licensee ("PSBL"). By granting such a sublicense, the Bureau would remove some of the uncertainty caused by the current rules. At the least, the

Bureau should grant the District's still-pending request for a waiver of the 180-day limitation on the duration of Special Temporary Authorizations.

II. BACKGROUND

A. Investment in the Nation's First and Only 700 MHz Broadband Network Dedicated to Public Safety Has Stalled Because of Regulatory Uncertainty.

Beginning in 2005, with a federal Urban Area Security Initiative ("UASI") grant of $3,750,000, the executives of the 21 jurisdictions of the National Capital Region ("NCR") established the NCR Interoperability Program ("NCRIP") to develop data and communications interoperability for public safety agencies operating in the NCR. The NCRIP included three projects: the NCRNet, to connect the institutional fiber networks already deployed by NCR jurisdictions; the Data Exchange Hub ("DEH"), to provide a platform for the exchange of public safety data among NCR jurisdictions; and the Regional Wireless Broadband Network ("RWBN"), to provide seamless, interoperable, mobile broadband communications for first responders region-wide. Before starting work on the RWBN, the NCR deployed the Wireless Accelerated Response Network ("WARN"), a 700 MHz pilot network using Flarion's OFDM technology in the District. Approximately 200 public safety users tested broadband data applications on WARN between January 2004 and December 2007 when users began to migrate to the RWBN.

The RWBN was designed as a multi-year, UASI grant-funded deployment, potentially providing reliable on-street coverage of the entire 2,500 square miles and over 4 million residents of the NCR. The network would provide dedicated, secure wireless transport of data such as situational incident information, high-resolution images, live-scene streaming videos, maps and other high-bandwidth data applications critical for joint incident response.

The NCR had already constructed the WARN pilot network and begun construction of the RWBN when the Commission issued the *Second Report and Order*, announcing its intent to leverage the commercial value of the 700 MHz D Block and public safety broadband spectrum to enlist a commercial entity to build a national public safety broadband network, saving local jurisdictions the cost of deploying their own networks.[1] Though the Commission was clear that "participation in the 700 MHz nationwide public safety network by individual public safety entities will be entirely voluntary," it provided only two limited circumstances in which "public safety entities [were permitted] to construct local broadband networks in the 700 MHz public safety spectrum."[2] Both of these circumstances required the existence of a Network Sharing Agreement ("NSA") between the national public safety licensee and the D Block licensee.[3]

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[1] Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule, WT Docket No. 07-166, *Second Report and Order*, 22 FCC Rcd 15289, ¶ 386 (2007) (*Second Report and Order*) *recon. pending*.

[2] *Second Report and Order,* ¶ 470.

[3] *Second Report and Order*, ¶¶ 473-74 (national public safety licensee, D Block licensee, and local public safety entity must agree to construction in an amendment to the NSA, but local entity may not operate the local network); and ¶ 480 (allowing local build-out where NSA does not require D Block licensee to build out).

The Commission did, however, recognize that construction of the RWBN had already begun in the NCR, using 700 MHz spectrum under an experimental license and waiver.[4] As a result, the Commission made an exception to its rule against public safety entities constructing and operating networks within the 700 MHz broadband spectrum. Specifically, the Commission permitted the NCR to continue to build out the RWBN and operate it "until such time as the NCR network is integrated into the nationwide, interoperable broadband network in accordance with the build-out plan set forth in the NSA."[5] Nevertheless, the Commission was clear that even if the NCR did continue to build out and operate the regional network, the RWBN would eventually be subsumed into the national network and operated pursuant to the terms of an NSA for which negotiations would not begin until after a successful auction.[6]

In light of the Commission's plan to cause a commercial entity to build a public safety network at no cost to state and local jurisdictions, executives in the NCR elected to put federal

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[4] *Second Report and Order*, ¶ 476, citing Request by National Capital Region for Waiver of the Commission's Rules to Allow Establishment of a 700 MHz Interoperable Broadband Data Network, WT Docket No. 96-86, *Order*, 22 FCC Rcd 1846 (PSHSB 2007).

[5] *Second Report and Order*, ¶ 476 ("nothing herein should be construed as preventing or limiting NCR's ability to continue to operate the broadband network they have built within the 700 MHz broadband allocation subject to NCR properly obtaining a grant of a request for Special Temporary Authority for such continued operation").

[6] *Second Report and Order*, ¶ 477-78. The Commission stated that the NCR may receive compensation for its deployment when the NCR network is subsumed into the national network, but the amount of such compensation, too, is dependent on the identity of the D Block licensee and the terms of the NSA. *Second Report and Order*, ¶ 478 ("NCR shall be entitled to the same rights and compensation as set forth herein for public safety entities electing to exercise their right to early build out."), ¶ 473 ("The right to compensation for the [early] build-out shall be limited . . . to the cost that would have been incurred had the D Block licensee constructed the network itself in accordance with the original terms and specifications of the NSA.").

homeland security grant funds toward other, competing priorities.[7] The RWBN thus faced a funding crisis: the business case for further investment was substantially weakened by the uncertainty of the date upon which the RWBN would be subsumed into the national network and the amount of compensation that would be received for the network when subsumed. The District awaited the results of the D Block auction and the negotiation of the NSA to answer these questions. The failure of Auction 73 to identify a D Block winner extended the period of uncertainty, further delaying the provision of critical interoperable communications capabilities to first responders.[8]

As noted above, the Commission in the *Second Report and Order* directed the NCR to seek Special Temporary Authorizations ("STAs") for continued operations; the District accordingly filed two STA applications to operate the RWBN at the twelve base stations deployed in the District of Columbia.[9] The Bureau granted these STAs for a 180-day period (the maximum permitted under Commission rules)[10] effective November 1, 2007 and reiterated the Commission's earlier statement that the District "may seek extensions of this STA until such

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[7] Likewise, the NCR has focused on other homeland security projects, and not the RWBN, in new proposals for federal funding.

[8] "Auction of 700 MHz Band Licenses Closes," *Public Notice*, DA 08-595 (rel. Mar. 20, 2008); Auction of the D Block License in the 758-763 and 788-793 MHz Bands, AU Docket No. 07-157, *Order*, FCC 08-91, ¶ 3 (rel. Mar. 20, 2008) (Commission will not re-offer the D Block license immediately after Auction 73 in order to "provide additional time to consider options with respect to the D Block spectrum.").

[9] *See* FCC File Nos. 0003149202 and 0003151108.

[10] 47 C.F.R. § 1.931(b).

time as the NCR network is integrated into the nationwide broadband public safety network."[11] Since that first application, the District has had to renew the STAs twice a year, never knowing whether the RWBN would be able to remain on the spectrum for more than six months at a time.[12]

Struggling to support a business case for the network under such conditions, the District on June 20, 2008 filed comments in response to the *Second Further Notice*,[13] urging the Commission to provide the regulatory certainty needed to support the network.[14] Rather than request permanent control of the spectrum, the District proposed something less, urging the Commission to provide the District ten years of spectrum access to enable it to benefit from its

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[11] See Request by National Capital Region for Special Temporary Authority to Operate a Broadband Network in the 700 MHz Public Safety Band, Order, 22 FCC Rcd 20912 ¶ 6 (PSHSB, rel. Nov. 29, 2007) (citation omitted). The STAs were assigned Call Signs WQHY489 and WQHY490.

[12] On April 15, 2008, approximately two weeks before the original STAs were due to expire, the District of Columbia filed applications to extend the STAs, which were granted on April 28, 2008.[12] FCC File Nos. 0003397425 and 0003397644. The District applied on October 15, 2008 for yet another renewal, which the Commission granted on December 12, 2008**.** FCC File Nos. 0003611071 and 0003611072. Because of the extension of the digital television transition, Commission on February 21, 2009 also extended the expiration date for the current STAs to August 21, 2009. FCC File Nos.0003745588 and 0003745589. The District again applied for renewal of its STAs on April 21, 2009; the Commission granted the renewals on June 24, 2009, setting the expiration date at February 21, 2010. FCC File Nos. 0003812942 and 0003812943.

[13] Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Second Further Notice of Proposed Rulemaking*, FCC 08-128 (rel. May 14, 2008) (*Second Further Notice*).

[14] The District is not alone in identifying regulatory uncertainty as an obstacle to the benefits broadband would bring to public safety. In their own waiver request, the City and County of San Francisco, and the Cities of Oakland and San Jose state that "the uncertainty surrounding the 700 MHz public safety spectrum is a major roadblock to the Bay Area Cities' urgent desire and need to build and operate a public safety broadband network *now*." Amended Request for Waiver, PS Docket No. 06-229 (May 27, 2009) at 8 (emphasis in original) ("Bay Area Waiver Request").

investment in the network. The District also requested permission to provide service to a broad base of users to carry the costs of operations and maintenance.[15] On September 25, 2008, the Commission issued the *Third Further Notice* in which it addressed the District's request. While it "remain[ed] sensitive to the fact that the District has expended significant efforts to achieve broadband interoperability in the near-term for public safety users within the District through the RWBN," the Commission nonetheless tentatively declined to grant the District's request, stating that if it granted the request it was "concerned about the resulting impact on the commercial viability of a regional or nationwide D Block licensee."[16]

On October 15, 2008, in conjunction with its application for a second renewal of its STAs, the District sought even less substantial relief, this time requesting that the Commission waive the current 180-day limitation on the duration of the STA, allowing the District to use the 700 MHz spectrum until it was otherwise needed by the PSBL.[17] The Commission deferred decision on the District's request, citing the pending proceeding and committing to incorporate the District's request into the record of the *Third Further Notice of Proposed Rulemaking*, then

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[15] Comments of the District of Columbia, WT Docket No. 06-150 and PS Docket No. 06-229 (June 20, 2008) ("District Comments").

[16] Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Third Further Notice of Proposed Rulemaking*, FCC 08-230, ¶¶ 299-300 (rel. Sept. 25, 2008) (*Third Further Notice*)

[17] Request for Extended Grant of Special Temporary Authority or for Waiver, If Necessary, File Nos. 0003611071 and 0003611072 (Oct. 15, 2008) ("District Request for Extended STA").

under consideration.[18] Six months later, the Commission still has not ruled on the District's Request for Extended STA, and further investment in the RWBN remains stalled.

B. The RWBN's Technology and Current State of Deployment

As currently deployed, the RWBN consists of twelve base stations and a primary core, all within the District of Columbia, providing 80-95 percent coverage outdoors in the District. Five additional base stations and a redundant core have been purchased but are in storage, pending funding for installation. The RWBN uses EVDO Revision A technology (the same 3G technology deployed by Verizon Wireless and Sprint) and can support roaming onto commercial networks in the 1.9 GHz band. The network's uplink rate peaks at 1.8 Mbps (600 Kbps is average); the peak downlink rate is 3 Mbps (1.2 Mbps average). Under its current STAs, the RWBN uses two 1.25 MHz channels in spectrum designated for public safety narrowband;[19] one channel is centered on 771.25 MHz and the other is centered on 801.25 MHz.

The RWBN was designed to be interoperable with other public safety broadband networks in the 700 MHz band, but that interoperability is a moot point: there *are* no such networks with which to interoperate. Though the RWBN's end-user devices are capable of roaming onto commercial networks in the 1.9 GHz band, even that interoperability is incomplete, because outside of the 298 PCMCIA cards the District has purchased, no other devices (commercial or otherwise) are capable of communicating with RWBN base stations. This is

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[18] Letter from Derek K. Poarch, Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, to Kenneth R. Boley, Director, Intergovernmental Initiatives, Office of the Chief Technology Officer, District of Columbia Government (Dec. 16, 2008) ("Response to District Request for Extended STA").

[19] *See* Section II.D for discussion of rebanding to the broadband spectrum.

largely a result of the failure of a market to develop for 700 MHz EVDO networks; without the prospect of a substantial customer base, manufacturers do not have the incentive to create equipment that can operate in EVDO networks in the 700 MHz band. As a result, equipment remains extremely expensive: for example, the $722 per device that the District paid at the advent of the network has not decreased.

C. The RWBN Supports Public Safety in Large-Scale Events and Provides a Test-Bed for Innovative Interoperability Projects.

District and federal agencies currently use approximately 100 PCMCIA cards on the RWBN on a pilot basis. Among the current users are the following agencies: DC Fire & EMS, DC Homeland Security Emergency Management Agency, DC Department of Health, DC Office of the Chief Medical Examiner, DC Department of Transportation, DC Office of the Chief Technology Officer, US Park Police, and US Capitol Police.

The large-scale events that the District hosts each year have provided strong proving opportunities for public safety broadband in the 700 MHz band. The RWBN and its predecessor network, WARN, have provided streaming video capability and other applications for such high profile events as the Fourth of July celebration on the National Mall, the Presidential Inauguration, the State of the Union Address, and last summer's visit from the pope. In preparation for the record crowd expected at this winter's inauguration celebration, commercial cellular carriers deployed portable cell sites to augment their capacity on the National Mall and along the inauguration parade route. Despite such precautions, at least one carrier reported that during the inauguration ceremony, so many commercial customers requested capacity that its commercial network became saturated with traffic, forcing the carrier to block calls from its customers; call blocking applied to public safety and to non-public safety users alike. The RWBN, dedicated to public safety users only, did not reach saturation and granted every request

for capacity placed upon the network. As a result, throughout the inauguration event and without interruption, the RWBN supported streaming video and other data applications, including location-based applications such as traffic management), NetViewer for computer-aided dispatch, CapWin for incident reporting and management, secure Internet access and email.

The RWBN has also served as a test-bed for development and testing of related public safety technologies. For example, the Radio Over Wireless Broadband ("ROW-B") project, conducted by the District's Office of the Chief Technology Officer ("OCTO") in conjunction with the US Department of Homeland Security, demonstrated the interoperability of voice service between existing public safety handheld radios on the District's land mobile radio network and new wireless IP devices (ultra-mobile PCs supporting both voice and data) operating over the RWBN.[20] In another project, funded by a grant from the National Institute of Justice, OCTO is testing the performance of a multi-network mobile virtual private network ("VPN") solution and demonstrating the combination and simultaneous use by a single user of multiple commercial and public safety wireless networks to provide greater coverage, higher throughput, and increased network reliability for public safety.

D. The Commission's Actions Will Determine the Future of the RWBN.

The future of the RWBN depends upon funding and commercial market forces, both of which are in turn dependent upon the Commission's regulatory decisions. As described above, the District has twice expressed to the Commission that the uncertainty created by the current

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[20] *See*, "DHS Pilots Interoperable Wireless Network with City of Washington, D.C.," *Government Technology* (Sept. 2, 2008), *available at* http://www.govtech.com/gt/403605?topic=117680.

regulatory structure poses a substantial challenge to the business case for continued investment in the network. Because current regulations prohibit construction of other networks in the public safety broadband 700 MHz spectrum, they inhibit the development of a market for equipment built for use in that band, thus depriving the District and other would-be early builders of the economies of scale that otherwise would drive equipment prices to affordable levels.

Another regulatory factor in the future of the RWBN involves rebanding. As described above, the RWBN currently operates in frequencies located in the narrowband portion of the 700 MHz public safety allocation. The District intends to ask the Commission for permission to reband the RWBN from its current frequencies to spectrum fully within the public safety broadband portion of the band. In the meantime, the District will work with others in the region to ensure that the RWBN causes no interference to those jurisdictions deploying narrowband networks in the 700 MHz public safety narrowband spectrum.

In time, it is the District's hope to migrate the network to a technology for which a broad market develops in the Upper 700 MHz band, thus enabling the network to benefit from the accompanying economies of scale and thereby achieve the levels of penetration and sustainability initially envisioned. Recognizing the need for a single public safety technology to provide interoperability as well as economies of scale, both the Association of Public-Safety Communications Officials ("APCO") and the National Emergency Number Association ("NENA") have recently endorsed Long Term Evolution ("LTE") as "the technological standard to be used in the development of a nationwide interoperable broadband network in the 700-MHz

band assigned to public safety,"[21] and the National Public Safety Telecommunications Council ("NPSTC") endorsed LTE as "the favored technology standard most suited to the development of a nationwide interoperable broadband network in the 700 MHz public safety band."[22] In addition, the public plans of major commercial carriers to build LTE networks in the Upper 700 MHz C Block[23] give hope that public safety LTE networks would benefit from the economies of scale driven by the enormous commercial customer base. Having adopted EVDO, for which no 700 MHz market has developed, the District is particularly wary of the risks to early builders selecting a technology that is not adopted as the national standard. Accordingly, the District has been investigating a possible migration path from the RWBN's current EVDO technology to LTE.

The timing of the Commission's action is also important. In order to complete network deployment and change to an interoperable technology standard, the District likely will have to rely upon federal stimulus funds under the Broadband Technology Opportunities Program

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[21] Press Release, "APCO & NENA Endorse LTE as Technology Standard for the Development of Nationwide Broadband Network," (June 9, 2009) *available at* http://www.apco911.org/new/news/nena_endorse_lte.php.

[22] Press Release, "NPSTC Votes to Endorse LTE Technology for Broadband Network," (June 10, 2009) *available at* http://www.npstc.org/documents/Press_Release_NPSTC_Endorses_LTE_Standard_090610.pdf.

[23] "AT&T, Verizon Racing to Rollout 4G Wireless," *InformationWeek* (May 28, 2009), *available at* http://www.informationweek.com/news/telecom/business/showArticle.jhtml?articleID=217700714.

("BTOP"). Given the short timeframe for requesting, receiving, and spending BTOP funds, prompt Bureau action to grant this waiver request is critical.[24]

III. THE DISTRICT SHOULD BE ABLE TO OWN AND OPERATE A NETWORK IN THE 700 MHZ SPECTRUM SUBJECT TO A SUBLICENSE ARRANGEMENT.

As described above, the District has asked the Commission twice for permission to operate the RWBN in the 700 MHz public safety spectrum for periods longer than the 180-day STAs it currently relies upon. Now, as cities and regions become increasingly focused upon the need for public safety broadband networks, the District adds its voice to those of others asking for greater local control of the spectrum, subject to interoperability requirements. The District now joins with others who have requested a "sublicense" to permit construction and operation of networks that would be interoperable and integrated with a national network.

A. Reliable Control of Spectrum Is Critical to Public Safety Adoption and Financial Stability of the Network.

As explained above and in the District's June 20, 2008 comments, the financial stability of the RWBN depends on continued permission to use the 700 MHz public safety spectrum.[25] The possibility that use of the spectrum will be revoked at the end of 180 days creates uncertainty and risk that weaken the business case for further investment in the network. As a

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[24] Concerns about the timing of a Commission action and its impact on BTOP funding are shared by others. In its waiver request, the City of Boston states that it "believes that for its [BTOP] grant application to be credible to reviewing officials, Boston must have received FCC approval of its 700 MHz waiver request before the grant application deadline. That application deadline is anticipated to be August 2009." Amended Request for Waiver, PS Docket No. 06-229 (May 28, 2009) at 7 ("Boston Waiver Request").

[25] District Comments at 12-15.

result, in order to support efficient, early build-out and the financial stability of early-built networks, the Bureau should provide more certain, longer-term control of the spectrum to the District, subject to interoperability requirements described below.

B. Control of Spectrum Is Properly Placed with the Owner/Operator of the Network to Ensure Clean Spectrum Free of Interference.

A critical aspect of the job of building and optimizing a wireless network is ensuring that the spectrum it relies upon is clear of interfering emissions. No party other than the owner of the network has a better understanding of or greater need to eliminate interference caused by conflicting uses of the spectrum. In its experience with the RWBN in the 700 MHz band, the District has received interference from a number of users, some of which have proven extremely difficult to identify, even with Commission help. Further, the holder of the spectrum license is in the best position to bring to the Commission's attention and seek to eliminate the interference. Thus, in order to align the incentive to ensure clean spectrum with the ability to combat interfering uses, control of the spectrum should rest with the network owner.

Already, some Upper 700 MHz C Block licensees have identified and begun a campaign to eliminate interfering uses in the Upper 700 MHz band. Among others, Verizon Wireless has been working to draw Commission attention to interference caused by wireless microphones in the Upper 700 MHz band, including both the commercial and public safety allocations.[26] Such interference would be harmful to commercial and public safety deployments. Without control of

[26] *See,* Comments of Verizon Wireless, WT Docket Nos. 08-166 and 08-167 (Oct. 3, 2008) at 7 ("[W]e agree . . . that there is a substantial risk of harmful interference from the continued operations of wireless microphones and other low power auxiliary devices in the 700 MHz band").

the spectrum, public safety network owners would be hamstrung in their ability to identify and combat such unauthorized, interfering uses of public safety spectrum.

C. The Commission Should Grant the District Control of the Spectrum, Subject to Interoperability Requirements.

Foreseeable, reliable control of the public safety broadband spectrum described above does not require that the early-builder hold a full license to the spectrum. Rather, such control may be provided by something less than a full license, referred to here as a "sublicense."[27] Under this sublicense, the PSBL continues to hold the national license as it does today, but individual network owners would hold sublicenses to that national license on a local, state, or regional basis. Thus, for example, the District or the NCR might hold a sublicense under the full license of the PSBL.

The sublicense envisioned here would provide the sublicensee all the authority of a full license, except that the sublicensee would have to comply with interoperability requirements as directed by the Commission, perhaps via the PSBL. Thus, the Commission or the PSBL would identify and define a single technology standard to ensure national interoperability and it would enforce sublicensees' compliance with that standard.

It is important to note that if a sublicense were granted on a permanent basis, the issue of compensation would become less important than under a scenario where the early-builder's use of the spectrum could be cut short. Under current regulation, use of the spectrum by the early-

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[27] The City of New York also has requested a sublicense to enable it to build in the 700 MHz public safety broadband spectrum. The District agrees that "[a]llowing localities to deploy 700 MHz public safety broadband networks in advance of a nationwide deployment would preserve local control for jurisdictions willing to build such networks." Petition for Waiver, WT Docket No. 06-150, PS Docket No. 06-229 (June 8, 2009) at 13, 8 ("New York Waiver Petition").

builder may be revoked at any time if the PSBL desires to use it for a national or regional network, perhaps well before the early-builder has begun to realize its planned return on investment. Under a permanent sublicense, however, the early-builder would be free use the spectrum for the long-term; the sublicensee's network still would need to interoperate and integrate with other public safety broadband networks in the 700 MHz spectrum, including a national or regional network.[28] Thus, the early-builder would have additional time to realize the benefit of its investment in its network, greatly enhancing the business case for such investment and reducing the need for compensation.

The District urges the Bureau to waive the Commission's rules and provide the District a sublicense as described herein, at least until the spectrum is otherwise required by the PSBL. At the very minimum, the Commission should grant the District's still-pending request for a waiver of the 180-day STA limitation.[29] Recognizing that the Commission has awarded the national license for the public safety broadband spectrum to the PSBL, the District will continue to work with the PSBL to advance the goals of national interoperability, expeditious deployment and sustainable operation of public safety broadband networks in the Upper 700 MHz band.

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[28] In all three of the related waiver requests recently submitted to the Commission, the filing entities contemplate "integrating" early-built networks with the national or regional network. Boston Waiver Request at 12, Bay Area Waiver Request at 9, New York Waiver Petition at 9.

[29] *See* District Request for Extended STA and Response to District Request for Extended STA.

IV. THIS REQUEST SATISFIES THE STANDARD FOR ANY NECESSARY WAIVER, AND GRANTING THE WAIVER WOULD SERVE THE PUBLIC INTEREST.

By granting the District's request herein, the Bureau can promote the Commission's primary public safety initiative—expanding the ability of public safety agencies to access interoperable broadband communications capabilities.

Given the Commission's view that the availability of a broadband data network in the national capital area is "especially important,"[30] the District urges the Bureau to take this step in order to assist the District in deploying the RWBN to its full potential. Granting this request would be fully consistent with the public interest, and would be justified under the Commission's waiver standards.

Under Section 1.925 of the Commission's rules, the Commission can grant a rule waiver if:

> (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or
>
> (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[31]

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[30] *Request by National Capital Region for Waiver of the Commission's Rules to Allow Establishment of a 700 MHz Interoperable Broadband Data Network*, WT Docket No. 96-86, *Order*, 22 FCC Rcd 1846 (PSHSB, rel. Jan. 31, 2007) at ¶ 11(*citing* NCR's statement that the National Capital Region is a "top terrorist target").

[31] 47 C.F.R. §1.925.

The circumstances presented here qualify the instant request for a waiver under either of the rule's two standards:

> *Waiver Standard 1 (Purpose and Public Interest)*: The goal of deploying broadband to protect the public health and safety will be frustrated if the District is not enabled to complete and operate the RWBN, as is the case today under the 180-day STAs. The relief requested here would further the public interest goals that the Commission has taken pains to promote in its recent public safety communications proceedings.
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> *Waiver Standard 2 (Equities, Burdens or Public Interest)*: The NCR public safety network would not have been possible had the Commission not seen fit to grant a waiver of several of its Part 90 rules to allow the RWBN to be created. The situation presented here, where a public safety entity is encouraged to build a network but must surrender its spectrum at an unknowable time, is unusual and contradictory. As the Commission has recognized, the public has an interest in promoting and developing interoperable public safety broadband capabilities. As described above, the current regulatory structure poses an unnecessary burden that frustrates that interest.

V. CONCLUSION

National interoperability can be achieved via national standards without depriving would-be early-builders the benefits of public safety broadband while the search goes on for a D Block winner and a national Network Sharing Agreement. For the foregoing reasons, the District of

Columbia urges the Bureau to grant a waiver of its rules to help enable completion and operation of the RWBN, the nation's first and only public safety broadband network in the 700 MHz band.

Respectfully submitted,

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